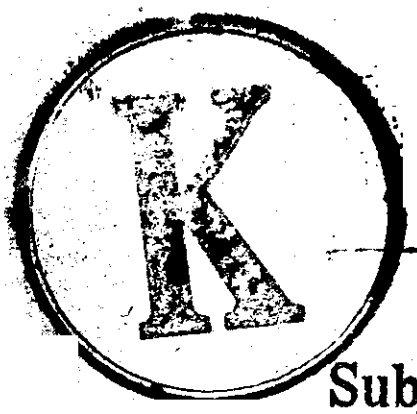
O./Cs.P.C./53

1953. File No. 47/53

P7E



Legal Department.
G BRANCH

Subject:— Opinions on the Criminal Procedure Code

File No. 47/53

Gen. 194 e.

47/53

C O N T E N T S

Legal Department Rule No. Q/ Cr. ...../53 (47-G)

Sr. No.	L. R. / J. No.	Subject	Pages.
		Opinions under the criminal procedure code.	
1.	C.R.O.C-527/29-8-53	Re: Disposal of the muddamal produced before any criminal court during any inquiry or trial if it is likely to delay. Whether the value of the deteriorated muddamal should be paid to the party concerned instead of returning the muddamal.	1-6
2.	G-594/25-9-53	Re: Licence under the Cattle control order for keeping cattle. Prosecution for breach of --- Action to be taken for keeping cattle in residential area which is detrimental to the sanitation of the locality	7-10
3.	G-711/19-11-53	Re Power under section 520 of any court of appeal, confirmation reference or revision to alter, modify or annul any order made under sections 517,518 and 519 passed by court or order thereto	11-12

MJS/16/57
5 Cs.

Z.D.R.I.No. G-1018, dt- 17-8-53

Submitted.

This is an echo ofC.R. No.68/47 filed agains Mohanlal Panchand under section 7 of the Essentia Supplies (Temporary Powers) Act, 1946 read with clause 13(1)(f) of the Cotton Cloth and Yarn Control Order, 1945. The accused was first discharged by the former Addl. Resident Magistrate, First Class, Broach but this order was set aside by the High Court, Bombay on 25-7-50 and retrial was ordered. Accordingly, the Addl. R.M., F.C. Broach retried the accused in criminal case No. 156/48 and passed an order of acquittal. This order was confirmed by the High Court in Criminal Appeal No. 1193 of 1952 (by Government).

The Addl. R.M., F.C., Broach when passing the order of acquittal on 30-4-52 had ordered that the muddamal cloth should be returned to the person from whose possession it was attached. On confirmation of the order of acquittal by the High Court the question of returning cloth porduced by Shri Himatlal Haggovindas, a social worker and reporter of the daily news-paper, 'Pratap.' arose. It appears that the cloth has deteriorated much due to storage for about 7 years. In view of this Shri Himatlal has requested that instead of the cloth he should be given the value of the cloth (which is only 106-14-6) produced by him and hi deceased brother. The District Magistrate, Broa has recommended the payment of the value of the muddamal cloth in cash on the ground that Shri Himatlal had purchased the cloth and produced i as evidence with a selfless motive, with a view to expose the malpractices of the cloth merchan and as he is not rich it would not be fair to make him bear the loss occasioned by long stora

The Civil Supplies Department proposes to

compensate Shri Himtala by giving him the value of the cloth and recovering a part of the value by auctioning the cloth. The Home Department has remarked that it is for the Department concerned to decide whether it should make good the loss. The Assistant Secretary, Finance Department, has stated that though the amount involved is small, why should Government be put to any loss. He seems to be under the impression that the value of the muddamal is to be paid to the accused who has been acquitted but this is not the case.

The question for R.L.A's consideration is whether the value of the deteriorated muddamal cloth should be paid to the Shri Himatlal instead of returning the muddamal to him as per court's orders.

Mjr/14/8/
4 Cs.

Legal Department-

Under section 516A of the Code of Criminal Procedure if the property produced before any criminal court during any inquiry or trial is subject to speedy or natural decay, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Generally in such cases therefore the court, if moved, passes an order that the property should be sold after keeping a sample and that the sale proceeds should be kept in criminal deposit. In this case therefore the party or the Prosecutor should have moved the court for orders regarding sale of the cloth. It appears this was not done and seven years have since elapsed and the cloth is deteriorated. As per the orders of the court to return the cloth to the person from whose possession it was attached shri Himatlal is legally entitled only to get back the cloth. Government will not be legally liable to make good the loss to Shri Himatlal.

Considering the facts as put forth by the District Magistrate that Shri Himatlal was not the accused but he is a social worker who in order to help Government in detecting the offence purchased the cloth and produced it as evidence, it would be open to Government to make exgratia payment.

Sd/-

O.C.

Secretary to Government.

U.R. to F.D., No. G527, dated the 29th August 1953.

Legal Department.

The view taken by the trial Magistrate that the accused would have got the licence if they had applied for it and that by shifting milch cattle from Bombay to Goregaon they is not correct. It is not the policy of Government have facilitated the policy of Government to remove cattle from the City proper to residential areas in the suburbs. The policy is to remove such cattle and to concentrate it in Aarey Colony a place reserved for that purpose. The grounds urged by the Magistrate for treating the offence as technical and imposing a light sentence are therefore not convincing. However it would not be advisable to take the matter to the High Court on that count only as the fact that the Bombay Cattle Control Order, 1949 is defunct for all purposes might weigh with the High Court. Besides it would not be possible to press for the forfeiture of the cattle under section 10 of the Bombay Essential Commodities and Cattle(Control) Act as under clause 4 of the Cattle Control Act, property in respect of which the offence is committed and which can be forfeited is the unauthorised premises and not cattle.

The alternative would be to file a fresh prosecution under the Cattle Control Order as the offence is a continuous one. The view taken by the Solicitors of Shri Ismail Janmohomed that the licence under that order is necessary only if the cattle were kept or permitted to be kept before the Bombay Cattle Control Order, 1949 was applied to that area is correct. (Please see clause 4 of the Order at p. 103 ante). Under the proviso to clause 4 of the Cattle Control Order, a licence is necessary only in respect of cattle kept in any area before the order came into force. However, the prosecution in this case would not be for keeping cattle without a licence but for keeping it at a place which is not previously approved by the authorised officer. Such a prosecution and the consequent conviction even if secured, will not solve the difficulty of enforcing removal of cattle and preventing the owner from keeping any cattle there unless the cattle is attached and the court orders confiscation of the muddamal cattle at the end of the trial.

Even action under section 278 of the Indian Penal Code will not solve the problem. Besides the offence under that section is non-cognizable and the neighbours who are repeatedly complaining about the nuisance will have to file a complaint.

"Public Nuisance" is defined in section 268 Indian Penal Code. The presence of the cattle in residential area which is detrimental to the sanitation of the locality and health of the neighbours and which has poluted the water of all the wells in the vicinity can be considered as causing annoyance to the public or to the people in general who dwell or occupy property in the vicinity. Besides nuisance cannot be excused on the ground that it causes some convenience or advantage. The only course that can be followed in respect of this public nuisance is to ask the District Magistrate, Thana to take action under chapter X of the Criminal Procedure Code to remove the public nuisance and to prohibit its repetition or continuance (vide sections 133 and 143 Cr. P.C.)

Sd/-

o.c.

Additional Secretary to Government.

U.R. to M.C., No. G- 594, dated the 25th September 1953.

Mjr/16/8/

4 Cs.

OFFICE OF THE R.L.A.

Section 520 Criminal Procedure Code provides that any Court of appeal, confirmation, reference or revision may alter, modify or annul any order made under section 517, 518 or 519 passed by a Court subordinate thereto and make any further orders that may be just. In the case reported in 1 Cr. L.J.764 Emp. vs. Hussain Shah and others it was held that where the Appellate Court in dealing with an appeal against the sentence has left untouched an order passed under sections 517-519, an application for revision of that order would lie in any of the Courts mentioned in section 520. The appeal was decided by the Sessions Judge in 1948(26-2-48 and as the period of limitation for a Revision Application has long since expired, there is no likelihood now of the revision of the order of the Lower Court. No revision application was filed in time perhaps because the accused had disclaimed the bales.

Sd/- P.I.Lad

19/11

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. C-711, dated the 19th November 1953.

Mjr/18/8/

4 Cs.